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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**CENTER ON RACE, POVERTY &
THE ENVIRONMENT,**

Plaintiff,

vs.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,**

Defendant.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Freedom of Information Act
Administrative Procedure Act

Plaintiff, the Center on Race, Poverty & the Environment, alleges as
follows:

COMPLAINT

INTRODUCTION

1
2 1. This action is premised upon, and consequent to, violations of the Freedom
3 of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.* (2012), and the
4 Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et. seq.* (2012). It
5 challenges the unlawful failure of the Defendant, the United States Environmental
6 Protection Agency (“EPA” or “Agency”), to abide by the statutory requirements of
7 the FOIA and the APA.

8 2. EPA is unlawfully withholding from public disclosure information sought
9 by the Center on Race, Poverty & the Environment (“CRPE,” or “Plaintiff”),
10 information to which it is entitled and for which no valid disclosure exemption
11 applies or has been expressly asserted. In particular, EPA has violated, and
12 remains in violation of, the statutory mandates imposed by the FOIA and the APA
13 by: (1) failing to provide a final determination resolving CRPE’s FOIA requests
14 within the time required by law; (2) failing to provide CRPE with a date certain on
15 which a final determination resolving CRPE’s FOIA requests will be dispatched,
16 as required when EPA invoked the “unusual circumstances” exception under the
17 FOIA; (3) failing to make EPA’s FOIA public liaison available to CRPE, as
18 required when EPA invoked the “unusual circumstances” exception under the
19 FOIA; and (4) unlawfully withholding documents from public disclosure over
20 which no valid disclosure exemption applies or has been asserted.

1 3. CRPE seeks declaratory relief establishing that EPA has violated the FOIA
2 and APA. CRPE also seeks injunctive relief directing EPA to promptly provide
3 the requested material. Finally, CRPE requests that the Court award Plaintiff its
4 reasonable attorneys fees and costs incurred in bringing this action.

5 JURISDICTION

6 4. This Court has jurisdiction over this matter pursuant to 5 U.S.C. §
7 552(a)(4)(B) (2012). That provision of the FOIA grants jurisdiction to “the district
8 court of the United States in the district in which the complainant resides, or has
9 his principal place of business[.]” CRPE both resides and maintains its principal
10 place of business in the Northern District of California. Accordingly, this Court
11 has jurisdiction over this dispute.

12 5. The Court also has federal question jurisdiction pursuant to 28 U.S.C. §
13 1331 (2012) because this action arises under the FOIA, the APA, and the
14 Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* (2012).

15 VENUE

16 6. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B)
17 (2012), because CRPE resides and has its principal place of business in the
18 Northern District of California.

19 INTRADISTRICT ASSIGNMENT

20 7. Pursuant to L.R. 3-2(d), this case is properly brought in the San Francisco

1 Division of the Northern District of California because a substantial part of the
2 events and omissions which gave rise to the claims alleged herein occurred in San
3 Francisco County.

4 **PARTIES**

5 8. Plaintiff CRPE is an environmental justice organization dedicated to helping
6 grassroots groups across the United States attack head on the disproportionate
7 burden of pollution borne by poor people and people of color. CRPE provides
8 organizing, technical and legal assistance to help community groups stop
9 immediate environmental threats. Gaining access to public records held by federal
10 agencies is a critical component of CRPE's work.

11 9. EPA is an agency of the executive branch of the United States government.
12 EPA is in possession and control of the records sought by CRPE, and as such, it is
13 subject to the FOIA pursuant to 5 U.S.C. § 552(f) (2012).

14 **LEGAL FRAMEWORK**

15 10. The FOIA requires U.S. government agencies to promptly make public
16 records available to any person if that person makes a request which (1) reasonably
17 describes the records sought and (2) complies with any applicable agency rules for
18 making such a request. 5 U.S.C. § 552(a)(3)(A) (2012).

19 11. The FOIA requires an agency to issue a final determination on any such
20 information request within twenty business days from the date of its receipt. 5

1 U.S.C. § 552(a)(6)(A)(i) (2012). In issuing a final determination, an agency is
2 required to inform the requester of three things: (1) the agency's determination of
3 whether or not to comply with the request; (2) the reasons for its decision; and (3)
4 notice of the right of the requester to appeal to the head of the agency. *See* 5
5 U.S.C. § 552(a)(6)(A)(ii) (2012).

6 12. The FOIA allows an agency to extend the twenty-day determination
7 deadline, however, by ten working days when "unusual circumstances" exist and
8 when the agency so notifies a requester in writing. 5 U.S.C. § 552(a)(6)(B) (2012).
9 An agency is entitled to one ten-business day extension. *Id.* The written notice
10 provided to the requester must specify the specific unusual circumstances
11 justifying the extension and the date on which a final determination is expected to
12 be dispatched. *Id.*

13 13. In some circumstances, the FOIA allows an agency to invoke an extension
14 beyond ten days. To invoke a longer extension, the FOIA requires an agency to
15 provide written notification to the requester that (1) offers the requester an
16 opportunity to limit the scope of the request so that it may be processed within that
17 time limit, or (2) offers the requester an opportunity to arrange with the agency an
18 alternative time frame for processing the request. 5 U.S.C. § 552(a)(6)(B)(ii)
19 (2012). The agency must also make available to the requester its FOIA public
20 liaison, who is tasked to resolve any dispute between the requester and the agency.

1 *Id.* The agency must still notify the requester of its expected date on which a final
 2 determination will be dispatched. 5 U.S.C. § 552(a)(6)(B)(i) (2012).

3 14. If an agency fails to provide a final determination on a FOIA request within
 4 the statutory timeframe, the requester is deemed to have exhausted its
 5 administrative remedies and may immediately file suit against the agency. 5
 6 U.S.C. § 552(a)(6)(C)(i) (2012).

7 **STATEMENT OF OPERATIVE FACTS**

8 **The *Angelita C.* FOIA Request**

9 15. On September 16, 2011, CRPE submitted a FOIA request to EPA
 10 concerning EPA's Office of Civil Rights' investigation and resolution of the Title
 11 VI Complaint *Angelita C. v. California Department of Pesticide Regulation*,
 12 Complaint #16R-99-R9 (hereinafter "*Angelita C.*"). A true and correct copy of the
 13 request is attached hereto as Exhibit A.

14 16. Title VI prohibits discrimination based on race, color, or national origin
 15 under any program or activity of a recipient of federal financial assistance. 42
 16 U.S.C. § 2000d (2012). CRPE, California Rural Legal Assistance, and Farm
 17 Worker Justice filed the complaint in *Angelita C.* on June 30, 1999 on behalf of
 18 children and parents of children attending schools in California near locations
 19 where the fumigant methyl bromide was being applied. The complaint specifically
 20 alleged that the California Department of Pesticide Regulation ("CDPR")

1 discriminated against Latino children by renewing the registration for methyl
2 bromide, a highly toxic fumigant, in January, 1999 without taking into
3 consideration the health impacts the pesticide has on children attending schools
4 located within a 1.5 mile radius of locations where pesticide applications occurred.
5 The complaint also alleged that methyl bromide was applied in greater quantities
6 near schools that Latino children attended.

7 17. Nearly a decade later, EPA's Office of Civil Rights completed its
8 investigation of the *Angelita C.* complaint. EPA informed CDPR in a letter dated
9 April 22, 2011, that the evidence in *Angelita C.* demonstrated a *prima facie*
10 violation of Title VI for the period from 1995 to 2001. Pursuant to 40 C.F.R. §
11 7.115, EPA's letter suggested a number of "recommended measures" for CDPR to
12 take to ensure that future Title VI violations are avoided. Even though EPA's
13 letter made clear that CDPR had engaged in discriminatory practices, the Agency
14 failed to refer the case to the U.S. Department of Justice for enforcement. *See* 40
15 C.F.R. § 7.130(a) (1984) (authorizing EPA to refer Title VI discrimination cases to
16 the Department of Justice). EPA also failed to notify CRPE or the complainants
17 that it had made the preliminary finding. Instead, EPA and CDPR engaged in a
18 series of backroom negotiations, resulting in a settlement which provided no relief
19 to the Latino children or parents that were exposed to unsafe levels of methyl
20 bromide. The settlement also failed to curtail applications of methyl bromide or

1 fumigants replacing methyl bromide and did not revoke CDPR's receipt of federal
2 funding, despite EPA's finding of *prima facie* discrimination.

3 18. CRPE's FOIA request seeks copies of EPA's documents and
4 communications related to the *Angelita C.* investigation and resolution. In
5 particular, CRPE requested copies of: (1) documents contained in EPA's Office of
6 Civil Rights' file on *Angelita C.*; (2) documents or communications that occurred
7 between EPA and CDPR or any other California agency; and (3) documents or
8 communications between EPA and other third parties related to *Angelita C.* These
9 documents are critical to CRPE's evaluation of whether EPA acted lawfully in
10 resolving the *Angelita C.* complaint.

11 **The *Padres* FOIA Request**

12 19. On October 7, 2011, CRPE submitted another FOIA request to EPA
13 concerning EPA's Office of Civil Rights' investigation of the Title VI Complaint
14 *Padres Hacia Una Vida Mejor v. California Department of Toxic Substances*
15 *Control*, Complaint #01R-95-R9 (hereinafter "*Padres*"). A true and correct copy
16 of the request is attached hereto as Exhibit B.

17 20. CRPE filed the *Padres* complaint on behalf of three community-based
18 organizations in Kettleman City, Buttonwillow, and Westmorland, California with
19 EPA's Office of Civil Rights on or about December 12, 1994. The complaint
20 alleged that the California Department of Toxic Substances Control ("CDTSC")

1 had violated Title VI by engaging in a statewide pattern and practice of
2 discrimination by permitting the only three toxic waste dumps in California in only
3 rural, low-income, Latino communities. As a result, these communities have been
4 forced to disproportionately bear the burden and health impacts associated with
5 toxic waste dumping.

6 21. On June 30, 2011, CRPE filed a complaint in *Padres Hacia una Vida Mejor*
7 *v. Jackson*, No. 1:11-cv-01094-AWI-DLB (E.D. Cal.), alleging that EPA
8 unlawfully withheld action legally required on the *Padres* complaint. On April 6,
9 2012, the Court denied EPA's motion to dismiss. *See Order Denying Defendants'*
10 *Motion* (Doc. 27). On August 30, 2012, EPD denied the complaint.

11 22. CRPE's FOIA request seeks copies of EPA's documents and
12 communications related to the *Padres* complaint. In particular, CRPE requested
13 copies of: (1) documents contained in EPA's Office of Civil Rights' file on
14 *Padres*; (2) documents or communications that occurred between EPA and
15 CDSTC or any other California agency; and (3) documents or communications
16 between EPA and other third parties. These documents are critical to CRPE's
17 evaluation of whether EPA has acted lawfully in undertaking its duty to investigate
18 the *Padres* complaint.

19 **Subsequent EPA Activity on CRPE's FOIA Requests**

20 23. CRPE's *Angelita C.* request was received by EPA on September 22, 2011

1 and assigned tracking number HQ-FOI-02264-11. Pursuant to the FOIA, EPA was
2 required to issue a final determination on the *Angelita C.* within twenty business
3 days, or by October 20, 2011. CRPE's *Padres* request was received by EPA on
4 October 7, 2011 and assigned tracking number HQ-FOI-00039-12. EPA was
5 similarly required to provide a final determination on this request within twenty
6 business days, or by November 4, 2011. 5 U.S.C. § 552(a)(6)(A) (2012). EPA
7 failed to issue a final determination on CRPE's requests by these deadlines.¹

8 24. Instead, on October 21, 2011, Helena Wooden-Aguilar, EPA's Assistant
9 Director of the Office of Civil Rights, provided an e-mail to CRPE indicating that
10 "unusual circumstances" prevented EPA from responding within the twenty-day
11 timeframe mandated by the FOIA. Ms. Wooden-Aguilar's e-mail was in response
12 to an October 19, 2011 telephone conference between CRPE's local counsel and
13 EPA attorneys Daniel Isales and Ariadne Goerke. During that conference, Mr.
14 Isales and Ms. Goerke requested CRPE to narrow the scope of its FOIA requests –
15 a request that CRPE respectfully declined.

16 25. Ms. Wooden-Aguilar's e-mail asserted three "unusual circumstances" which

17
18 ¹ Both of CRPE's FOIA requests sought fee waivers under 5 U.S.C. § 552(a)(4)(A)(iii). EPA
19 initially denied this request, which was partially overturned after CRPE appealed the denial. In
20 particular, EPA granted CRPE's fee waiver for documents pertaining to communications
between EPA and third parties, for documents related to the progress or delay of the *Padres*
complaint, and for documents related to the reasons for settlement of the *Angelita C.* complaint.

1 prevented EPA from timely responding to CRPE's FOIA requests: (1) the need to
2 search for and collect the requested records from various offices; (2) the need to
3 search for, collect and examine a voluminous amount of records; and (3) the need
4 to consult with more than two components within the agency that have an interest
5 in the requested records.

6 26. Importantly, at no point did Ms. Wooden-Aguilar's e-mail provide CRPE
7 with a date certain by which it could expect EPA to dispatch a final determination
8 on its FOIA requests. This omission violated the statutory mandates of the FOIA.
9 5 U.S.C. § 552(a)(6)(B)(i) (2012) (when invoking "unusual circumstances," an
10 agency "must specify the date on which a determination is expected to be
11 dispatched"); *see also* 40 C.F.R. § 2.104(d) (2002) (EPA's regulations
12 implementing the FOIA) (requiring EPA to notify a requester "of the date by
13 which processing of the request should be completed").

14 27. Ms. Wooden-Aguilar's e-mail also failed to make EPA's FOIA Public
15 Liaison officer available to CRPE to aid in the resolution of CRPE's FOIA
16 requests. This is required by the FOIA. 5 U.S.C. § 552(a)(6)(B)(ii) (2012) ("To
17 aid the requester, each agency shall make available its FOIA Public Liaison, who
18 shall assist in the resolution of any disputes between the requester and the
19 agency.").

20 28. Finally, Ms. Wooden-Aguilar's e-mail indicated that EPA's Office of Civil

1 Rights would be compiling a list of categories of documents for CRPE to review.
2 CRPE received those lists in an e-mail from Daniel Isales on November 18, 2011.
3 In that e-mail, Mr. Isales affirmed that EPA was providing the category lists “to
4 see if it can help us reach agreement on a response to both of the Freedom of
5 Information Act requests...on a rolling basis.” *See* Exhibit C (Copy of November
6 18, 2011 e-mail from Daniel Isales to Brent Newell).

7 29. On January 12, 2012, CRPE exchanged a series of e-mails with EPA in
8 which the parties agreed that EPA would begin producing those documents to
9 which CRPE was entitled to a fee waiver on a rolling basis.² CRPE requested in
10 that same communication that EPA provide a cost estimate for those files that were
11 not subject to the fee waiver. In a subsequent follow-up e-mail dated January 24,
12 2012, Daniel Isales informed CRPE that EPA was in the process of gathering
13 responsive materials subject to the fee waivers for both FOIA requests. Mr. Isales
14 did not inform CRPE of when those documents would be made available, nor
15 when the review process would be complete. Nor did he provide a cost estimate
16 for production of documents not subject to the fee waiver.

17 30. Despite EPA’s promise to provide responsive documents on a rolling basis,
18 CRPE received no communication from the Agency for nearly three months.

19 ² The delay between November 18 and January 12 was primarily due to EPA’s denials of
20 CRPE’s requests for fee waivers under the FOIA. CRPE’s appeals of those denials were not
resolved until December 16, 2011.

1 Thus, on April 16, 2012, CRPE wrote to EPA requesting an update on why
2 documents had not yet been produced and why no cost estimate had been provided.
3 Mr. Isales responded on April 19, 2012, suggesting that EPA had made some
4 progress on identifying responsive documents but again reiterated that “unusual
5 circumstances” prevented timely disclosure. Mr. Isales stated that EPA’s Office of
6 Civil Rights had begun reviewing documents and that third party communications
7 related to the *Padres* request would be coming “in the very near future.” Once
8 again, EPA failed to provide a date certain by which CRPE could expect a final
9 determination on its requests.

10 31. As of the date of this complaint, CRPE has not received any further
11 communication from EPA. No responsive documents have been produced to
12 CRPE, even though such documents were to be provided on a rolling basis. Nor
13 has CRPE been supplied with a cost estimate for those documents to which it did
14 not receive a fee waiver.

15 32. To date, EPA has not provided CRPE with a final determination on its FOIA
16 requests containing (1) the Agency’s determination of whether or not to comply
17 with the request; (2) the reasons for its decision; and (3) notice of the right of the
18 requester to appeal to the head of the agency. Accordingly, CRPE is deemed to
19 have constructively exhausted its administrative remedies. *See* 5 U.S.C. §
20 552(a)(6)(A)(ii) (2012).

1 33. CRPE has been forced to retain the services of outside counsel and to
2 expend funds litigating EPA's unlawful actions and omissions under the FOIA and
3 the APA.

4 34. EPA is unlawfully withholding documents from public disclosure in
5 violation of the requirements of the FOIA. At no time has EPA expressly asserted
6 that any of the documents in its possession are subject to one of the FOIA's
7 disclosure exemptions.

8 CAUSES OF ACTION

9 COUNT I

10 VIOLATION OF THE FREEDOM OF INFORMATION ACT: 11 DETERMINATION DEADLINE VIOLATION

12 35. The allegations made in all preceding paragraphs are realleged and
13 incorporated by reference herein.

14 36. CRPE has a statutory right to have EPA process its FOIA requests in a
15 manner which complies with the FOIA. Plaintiff's rights in this regard were
16 violated when EPA unlawfully delayed informing CRPE of its final determination
17 on the *Angelita C.* and *Padres* requests beyond the twenty-day determination
18 deadline imposed by the FOIA. 5 U.S.C. §§ 552(a)(6)(A)(i), (B) (2012).

19 37. Based on the nature of CRPE's organizational activities, CRPE will continue
20 to employ the FOIA's provisions in information requests to EPA in the foreseeable

1 future. These activities will be adversely affected if EPA is allowed to continue
2 violating FOIA's response deadlines.

3 38. Unless enjoined and made subject to a declaration of Plaintiff's legal rights
4 by this Court, EPA will continue to violate the rights of Plaintiff to receive public
5 records under the FOIA.

6 39. EPA's failure to make a final determination on CRPE's FOIA requests
7 within the statutory timeframe has prejudiced Plaintiff's ability to timely obtain
8 public records.

9 **COUNT II**

10 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:** 11 **FAILURE TO PROPERLY INVOKE UNUSUAL CIRCUMSTANCES** **EXCEPTION**

12 40. The allegations made in all preceding paragraphs are realleged and
13 incorporated by reference herein.

14 41. CRPE has a statutory right to have EPA process its FOIA requests in a
15 manner which complies with FOIA. Plaintiff's rights in this regard were violated
16 when EPA failed to properly invoke FOIA's "unusual circumstances" exception.

17 42. When an agency invokes the "unusual circumstances" exception, it must
18 provide written notification to the requester containing, *inter alia*, "the date on
19 which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B)(i)
20 (2012). The agency shall also make available to the requester its FOIA Public

1 Liaison, who is tasked in resolving any dispute between the requester and the
2 agency. 5 U.S.C. § 552(a)(6)(B)(ii) (2012).

3 43. At no time did EPA provide CRPE with a date certain on which a final
4 determination on the *Angelita C.* and *Padres* requests would be dispatched. Nor
5 did EPA make it FOIA public liaison available to CRPE.

6 44. These failures and unlawful actions have prejudiced CRPE's ability to
7 timely obtain public records. CRPE still does not know when it should expect a
8 final determination on its FOIA requests. Moreover, CRPE was not provided
9 access to EPA's FOIA public liaison, who CRPE would have used to help resolve
10 this dispute.

11 45. Based on the nature of CRPE's organizational activities, CRPE will continue
12 to employ FOIA's provisions in information requests to EPA in the foreseeable
13 future. These activities will be adversely affected if EPA is allowed to continue to
14 illegally invoke the "unusual circumstances" exception.

15 46. Unless enjoined and made subject to a declaration of CRPE's legal rights by
16 this Court, EPA will continue to violate the rights of CRPE to receive public
17 records under the FOIA.

18 ///

19 ///

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COUNT III

**VIOLATION OF THE FREEDOM OF INFORMATION ACT
FAILURE TO PROVIDE NON-EXEMPT PUBLIC RECORDS**

47. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

48. CRPE has a statutory right to have EPA process its FOIA requests in a manner which complies with FOIA. CRPE's rights in this regard were violated when EPA failed to promptly provide public, non-exempt records to CRPE. 5 U.S.C. § 552(a)(3) (2012).

49. EPA is unlawfully withholding public disclosure of information sought by CRPE, information to which it is entitled and for which no valid disclosure exemption applies or has been asserted.

50. Based on the nature of CRPE's organizational activities, it will undoubtedly continue to employ FOIA's provisions in information requests to EPA in the foreseeable future.

51. CRPE's organizational activities will be adversely affected if EPA is allowed to continue violating FOIA's response deadlines as it has in this case.

52. Unless enjoined and made subject to a declaration of CRPE's legal rights by this Court, EPA will continue to violate the rights of CRPE to receive public records under the FOIA.

COUNT IV

VIOLATIONS OF THE ADMINISTRATIVE PROCEDURES ACT

53. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

54. EPA has failed to act in an official capacity under color of legal authority by violating the requirements of the FOIA. In particular, EPA: (1) failed to issue a timely final determination on CRPE's information requests; (2) improperly invoked the "unusual circumstances" exception; and (3) continues to unlawfully withhold documents from public disclosure.

55. EPA has unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to issue timely final determinations on CRPE's information requests and to produce non-exempt records.

56. CRPE has been adversely affected and aggrieved by EPA's failure to comply with the mandates of FOIA. EPA's failure and refusal to issue timely final determinations on CRPE's information requests has injured Plaintiff's interests in public oversight of governmental operations and constitute a violation of Defendant's statutory duties under the APA.

57. CRPE has suffered a legal wrong as a result of EPA's failure to comply with the mandates of FOIA. EPA's failure and refusal to issue timely final

1 determinations on CRPE's information requests has injured Plaintiff's interests in
2 public oversight of governmental operations and constitute a violation of
3 Defendant's statutory duties under the APA.

4 58. EPA's failure and refusal to issue timely final determinations on CRPE's
5 information requests, failure to properly invoke the "unusual circumstances"
6 extension, and failure to produce non-exempt public records constitutes agency
7 action unlawfully withheld and unreasonably delayed and is therefore actionable
8 pursuant to the APA, 5 U.S.C. § 706(1) (2012).

9 59. Alternatively, EPA's failure and refusal to issue timely final determinations
10 on CRPE's information requests, failure to properly invoke the "unusual
11 circumstances" extension, and failure to produce non-exempt public records is in
12 violation of FOIA's statutory mandates and is therefore arbitrary, capricious, or an
13 abuse of discretion and not in accordance with law and is therefore actionable
14 pursuant to the APA, 5 U.S.C. § 706(2) (2012).

15 60. CRPE is entitled to judicial review under the Administrative Procedure Act
16 5 U.S.C. §§ 702, 706 (2012).

17 61. CRPE is entitled to costs of disbursements and costs of litigation, including
18 reasonable attorney and expert witness fees, under the Equal Access to Justice Act,
19 28 U.S.C.S. § 2412 (2012).

20 ///

REQUEST FOR RELIEF

WHEREFORE, CRPE prays that this Court:

1. Order EPA to promptly provide CRPE all of the information sought in this action and to immediately disclose the requested documents.

2. Declare EPA's failure to make timely determinations on CRPE's information requests to be unlawful under the FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i), (ii) (2012), as well as agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1) (2012), and/or arbitrary, capricious, an abuse of discretion, and not in accordance with law, 5 U.S.C. § 706(2) (2012).

3. Declare EPA's failure to properly invoke the "unusual circumstances" exception to be unlawful under the FOIA, 5 U.S.C. §§ 552(a)(6)(B)(i), (ii) (2012), as well as agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1) (2012), and/or arbitrary, capricious, an abuse of discretion, and not in accordance with law, 5 U.S.C. § 706(2) (2012).

4. Declare EPA's failure to disclose the information requested by Plaintiff to be unlawful under the FOIA, 5 U.S.C. § 552(a)(3) (2012), as well as agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1) (2012), and/or arbitrary, capricious, an abuse of discretion, and not in accordance with law, 5 U.S.C. § 706(2) (2012).

5. Award CRPE its reasonable attorneys fees and costs pursuant to 5

1 U.S.C. § 552(a)(4)(E) (2012) and 28 U.S.C. § 2412 (2012).

2 **6.** Grant such other and further relief as the Court may deem just and
3 proper.

4 Respectfully submitted this 28th Day of September, 2012.

5 /s/ Brent Newell
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